

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 162 OF 2005

Mohammed Ali H.Hasham. ... Appellant.
Versus.
Ms.Rashtabee Chand Miyan Ibrahim & ors.... Respondents.

Shri G.S.Godbole with Shri V.S.Kapse for the Appellant.

Ms.Nichani with Ms.S.M.Poddar for the Respondents
Nos.1 & 2.

Shri J.Xavier for the Respondents Nos.3 to 8.

CORAM : ABHAY S. OKA, J.

DATED : 7th February, 2005.

P.C.:

1. Admit. The learned Counsel for the Respondents waive service. Heard the learned Counsel appearing for the parties forthwith.

2. The challenge in this appeal is to the Judgment and order passed by the learned trial Judge dated 27th January 2005 in Notice of Motion No.5302 of 2004. One of the submissions made by the learned Counsel for the Appellant is that the learned trial Judge has granted a drastic injunction against the Appellant only on the ground that the parties had sought to find out amicable solution and were unable to do so till the date of passing of the order. He submitted that prima facie case is not considered by the learned trial Judge.

3. The learned Counsel appearing for the Respondents Nos.1 and 2 initially supported the impugned Judgment and Order. At a later stage the learned Counsel for the Respondents Nos.1 and 2 stated that in view of the fact there is no specific finding recorded on the issue of establishing prima facie case by the Respondents Nos.1 and 2, she has no objection if the impugned order is set aside and the Notice of Motion is directed to be heard afresh.

3. In view of these submission made by the learned Counsel appearing for the parties, the following order is passed:

(i) The impugned Judgment and Order is set aside on the ground that proper reasons are not assigned by the learned trial Judge in accordance with the law.

(ii) The Notice of Motion No.5302 of 2004 is remanded back to the learned trial Judge for hearing afresh.

(iii) The parties will appear before the learned trial Judge on 14th February 2005. The learned trial Judge will hear and decide Notice of Motion No.5302 of 2004 afresh as expeditiously as possible. In case any

other Notice of Motions are pending in the
same suit, the learned trial Judge will
decide all the motions together and dispose
of the same as expeditiously as possible.

(iv) All questions on merits are kept open.

(v) Parties and the concerned Court will act
on the authenticated copy of this order.

Judge.